IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

WRIT PETITION NO.3200 OF 2006

Bahadur Burjourji Jassawalla. ...Petitioner.

Vs.

Baslat Construction Pvt.Ltd. & Anr...Respondents.

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Mr.N.V.Walawalkar with Mr.B.H.Vyas for the Petitioner.

Mr.N.N. Amin for Respondent No.1.

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**CORAM : DR.D.Y.CHANDRACHUD, J.**

June 5, 2006.

**P.C. :**

After the petition has been argued, Counsel appearing on behalf of the contesting parties are agreed that in view of the following order which shall be passed by consent of parties, no further reasons are required to be recorded. In view of

the statement, the petition shall stand disposed of by consent in the following terms:

(1) The record of the evidence before the Trial Court shall stand corrected with reference to the following question posed to the Plaintiff's witness Mr.Rohington Shroff (P.W.1) :

> "Q.(c) In order to create evidence against the Defendant that you complained to the Municipal Corporation.
>
> Ans. No, however, I complained to B.M.C. to take action as the Defendant and his family members did not co-operate and allow myself or tenant in Flat No.2 to repair his bath room and thereby stop the leakage."
>
> "Witness volunteers, the defendant not complying with B.M.C. instructions while being prosecuted by them in the Metropolitan Court and being fully aware of the heavy leakage from his flat into flat No.2, on the

> ground floor purposely dragged the matter in the Shindewadi Court for 4-1/2 years seeking more than 35 adjournments was finally convicted with the fine of Rs.1,000/-."

(2) The question as to whether the following part of the evidence of P.W.1 was or was not a part of the answers originally forming part of the record before the Commissioner shall be finally determined at the trial of the suit, namely:

> "Now the Plaintiff clarify that the same has not been mentioned in R.A.D. Suit but is mentioned by Defendant in his Written statement in R.A.E.& R. Suit No.214 of 1998 at para 39 page 23."

The Learned Trial Judge, in the event of a contention being raised in regard thereto, shall deal with that contention uninfluenced by the observations contained in the impugned order dated 4th April 2006. All the rights and contentions of the parties are kept open.

(3) An amount of Rs.10,000/- has been deposited before the Trial Court by the Petitioner in pursuance of the impugned order dated 4th April 2006 shall continue to remain in deposit before the Trial Court pending final disposal of the suit. The Learned Trial Judge shall decide the question of costs at the conclusion of the trial and while delivering final judgment, the question as to whether costs should be awarded shall be considered uninfluenced by any of the observations contained in the impugned order dated 4th April 2006.

(4) In view of the aforesaid arrangement arrived at between the parties, Counsel appearing on behalf of the Petitioner craves leave to withdraw Interim Notice No.151 of 2006 in R.A.E.& R. Suit No.214/436 of 1998. In that view of the matter, by consent, the impugned order dated 4th April 2006 is set aside. The trial of the suit is expedited having regard to the fact that the suit is of 1998. The Learned Trial Judge shall endeavour to dispose of the suit on merits expeditiously. All the rights and contentions of the parties are kept

open. The petition shall stand disposed of.

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